

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 21-313V

SIERRA ERB,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 22, 2023

*Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for
Petitioner.*

Neil Bhargava, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 8, 2021, Sierra Erb filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges she suffered a Table injury – shoulder injury related to vaccine administration (“SIRVA”), as the result of the tetanus-diphtheria-acellular-pertussis (“Tdap”) vaccination she received on October 27, 2020. Petition at 1; Amended Petition, filed March 2, 2023, at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On October 30, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On December 21, 2023, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$111,000.00 in pain

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

and suffering, and past unreimbursable expenses in the amount of \$1,128.39. Proffer at 1-2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$112,128.39 (representing \$111,000.00 in pain and suffering, and \$1,128.39 in past unreimbursable expenses) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

SIERRA ERB,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 22-32V

Chief Special Master Corcoran

ECF

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On January 8, 2021, Sierra Erb (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that she suffered a Table shoulder injury related to vaccine administration (“SIRVA”), as the result of an influenza (“flu”) vaccination she received on March 2, 2021. Petition at 1. On October 27, 2023, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report indicating that this case is appropriate for compensation under the terms of the Act for a SIRVA Table injury, and on October 30, 2023, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 24; ECF No. 25.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$111,000.00 in pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents that she incurred past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$1,128.39. *See* 42 U.S.C. § 300aa-15(a)(1)(B). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through lump sum payments as described below and requests that the Chief Special Master's decision and the Court's judgment award the following¹:

A. A lump sum payment of \$112,128.39, in the form of a check payable to petitioner.

III. Summary of Recommended Payments Following Judgment

A. Lump sum payable to petitioner, Sierra Erb. **\$112,128.39**

Respectfully submitted,

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Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Director
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Deputy Director
Torts Branch, Civil Division

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Assistant Director
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¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future, unreimbursed expenses, future lost earnings and future pain and suffering.

/s/ Neil Bhargava
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